

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ALICIA CABRERA</b>	)	
Claimant	)	
VS.	)	
	)	
<b>CASCO, INC.</b>	)	Docket No. 234,374
Respondent	)	
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appealed the April 28, 2000 Award entered by Administrative Law Judge Nelsonna Potts Barnes. The Appeals Board heard oral argument on September 8, 2000, in Wichita, Kansas.

**APPEARANCES**

Joseph Seiwert of Wichita, Kansas, appeared for claimant. Douglas D. Johnson of Wichita, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

This is a claim for a series of mini-traumas and a repetitive overuse injury to claimant's low back. Claimant filed this claim alleging that the accidental injury began on June 14, 1998, and continued each workday thereafter. But Judge Barnes found that the appropriate accident date for purposes of computing claimant's workers compensation benefits was June 16, 1998. The parties do not contest that finding.

In the April 28, 2000 Award, which is the subject of this appeal, Judge Barnes found that claimant injured her low back while working for respondent and awarded claimant

benefits for a 10 percent permanent partial general disability followed by a 52 percent permanent partial general disability. The 52 percent disability rating is the average of a 66.76 percent task loss and a 37 percent wage loss.

Respondent and its insurance carrier contend Judge Barnes erred. They argue that (1) claimant failed to prove that she injured her low back while working for respondent, (2) claimant failed to make a good faith effort to find appropriate work after she was laid off when respondent's manufacturing plant closed in April 1999, (3) any award of benefits should be limited to the functional impairment rating, and (4) any award of permanent partial disability benefits in excess of the functional impairment rating should be offset by a K.S.A. 44-510a credit.

Conversely, claimant argues that the Award should either be affirmed or the permanent partial general disability rating increased. Claimant argues that her low back injury has caused a 66.67 percent task loss and a 100 percent wage loss. Claimant argues that, if anything, the Judge erred by imputing a \$240 per week post-injury wage.

The issues before the Appeals Board on this review are:

1. Did claimant prove that she injured her low back while performing work for respondent?
2. If so, what is the nature and extent of the injury and the resulting disability?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. After reviewing the entire record and considering the parties' arguments, the Appeals Board finds and concludes that claimant has failed to prove that she injured her low back while performing work for respondent.
2. The evidence is rather nebulous and vague as to the mechanism of the alleged injury. The Appeals Board is not convinced that it is more probably true than not that claimant sustained permanent injury to the low back due to her work activities. The only doctor to address the causation issue was Dr. Pedro A. Murati, who related the back complaints to claimant's work without knowing much, if anything, of claimant's work activities or the potential mechanism of injury. The Board finds that Dr. Murati's opinion of medical causation lacks foundation and is entitled to little weight.
3. Because claimant has failed to prove that she sustained a permanent low back injury from the work that she performed for respondent, the awards for permanent partial general disability benefits and future medical benefits for the low back should be reversed.
4. The Appeals Board adopts the findings and conclusions made in the Orders executed this date in Docket #198,074 and Docket #228,987.

**AWARD**

**WHEREFORE**, the Appeals Board modifies the April 28, 2000 Award and reverses the awards for permanent partial general disability benefits and future medical benefits. The remaining orders set forth in the Award are affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 2000.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Joseph Seiwert, Wichita, KS  
Douglas D. Johnson, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director